

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for
Reinstatement of:

KIRAN BHATT
1364 N. Schooner Lane
Anaheim, CA 92801-1778

Physician's and Surgeon's
Certificate No.: A-34906

Respondent

Case No.: 27-2010-206309

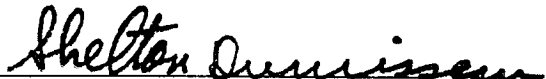
DECISION AND ORDER

The attached Proposed Decision is hereby adopted by the Medical Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on September 30, 2011.

IT IS SO ORDERED: September 2, 2011.

MEDICAL BOARD OF CALIFORNIA

By: 
SHELTON DURUISSEAU, Ph.D.
Chair

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MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

KIRAN BHATT, M.D.

Physician's and Surgeon's Certificate
Number A 34906,

Petitioner.

Case No. 27-2010-206309

OAH Case No. 2011031378

PROPOSED DECISION

Administrative Law Judge (ALJ) Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on July 15, 2011.

Deputy Attorney General Maura Faust appeared pursuant to Government Code section 11522.

There was no appearance by or on behalf of petitioner Kiran Bhatt.

Oral and documentary evidence was presented. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

1. On February 19, 1980, the Board issued Physician's and Surgeon's Certificate Number A 34906 to petitioner.
2. On May 14, 1998, the Board filed its original Accusation (No. 03-97-79223) against petitioner. The Board alleged that petitioner's license should be disciplined based

upon her failure to comply with its March 10, 1998 Order for Psychiatric Examination, pursuant to Business and Professions Code sections 820, 821, and 2234.¹

3. On July 2, 1998, an Interim Order of Suspension (Order) was issued, pursuant to section 821 and Government Code section 11529, which suspended petitioner from the practice of medicine pending an administrative hearing and decision on the Accusation. The Order provided that the suspension would be stayed if petitioner complied with the order for psychiatric examination and the results of that examination cleared her as being safe to practice medicine.

4. On August 3, 1998, the Board filed its First Supplemental Accusation, with additional grounds for discipline based upon mental illness as determined by petitioner's July 22, 1998 psychiatric examination by David J. Sheffner, M.D. In his August 3, 1998 report, Dr. Sheffner concluded that "Dr. Bhatt has been and continues to be substantially impaired in her ability to practice medicine in a manner that provides for the safety and welfare of patients."

5. Following an administrative hearing convened August 17 and September 8, 1998, Administrative Law Judge Jonathan Lew issued a Proposed Decision, finding cause for discipline based upon petitioner's failure to comply with the initial order for psychiatric examination, and the determination after psychiatric examination that her ability to practice medicine safely "is impaired because she is mentally ill." Petitioner's license was revoked, and she was ordered to pay reasonable costs for the investigation and enforcement of the matter.

6. On December 15, 1998, the Board reduced the proposed cost penalty and, with that sole exception, adopted the Administrative Law Judge's Proposed Decision as its Decision and Order, effective January 14, 1999. Since that date, petitioner's license to practice medicine in California has been revoked.

7. On February 23, 2011, the Board received petitioner's signed Petition for Penalty Relief for reinstatement of her revoked license (Petition). The Petition was accompanied by letters of recommendation signed under penalty of perjury by Jerome S. Tobis, M.D. (two letters), Ronald Couturier, D. O., John L. Melvin, M.D., and Rosa Maria Martinez, M.D.

8. Thereafter, the matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

¹ Unless otherwise indicated, all undesignated statutory references are to the Business and Professions Code.

9. *Petitioner's Default:* The notice of hearing in this matter was timely served on petitioner at her address of record with the Board (1364 Schooner Lane, Anaheim, California) and at the address she included in the Petition (4001 Summitview Avenue, Yakima, Washington). Both notices were returned as undeliverable. On July 6, 2011, the Board mailed an additional notice of hearing to a new address for petitioner (3004 Fruitvale Blvd. 1, Yakima, Washington), which was not returned. In addition, Board Senior Investigator Roberto Moya made multiple unsuccessful telephone calls to petitioner, but was unable to leave messages because there was no voice mail. Mr. Moya also sent petitioner an electronic mail message to contact him immediately at an e-mail address petitioner had used to communicate with him. There was no response.

The Board complied with notice requirements and the matter proceeded as a default against petitioner pursuant to Government Code section 11520.

10. *Basis for License Revocation:* In its Decision, the Board made the following critical findings that inform the current petition for reinstatement.

After Dr. Sheffner's clinical examination, psychological testing and review of historical and other information, he was "of the opinion that respondent [petitioner] is in immediate need of regular treatment with anti-psychotic medications. He recommends that she be treated by a Board eligible/certified psychiatrist for the indefinite future." Dr. Sheffner based his recommendation on the following:

--Since at least 1997 and continuing, respondent suffers from a paranoid psychotic condition. Her condition manifests itself in profound impairments in reality testing including delusional thoughts, in her ability to think and therefore to communicate along logical lines, in her ability to weigh, to consider and to exercise appropriate judgment in executive functions, in her ability to concentrate and to exercise appropriate impulse control, and in her ability to maintain reasonable equilibrium of her mood. Such disorganization of thinking/mood produces a picture of disorganized and inappropriate behavior. Individuals with this condition have decreased insight into their impairments.

--Inasmuch as the above described elements of cognition, behavior and interpersonal functioning are essential requirements to the adequate and safe practice of medicine, Dr. Sheffner concludes that when suffering from such symptomatology respondent has been and continues to be substantially impaired in her ability to practice medicine in a manner that provides for the safety and welfare of patients. He points specifically to concerns relating to her thinking-behavior related to direct patient care, and to her ability to communicate coherently and appropriately to patients, their families and other medical staff.

Further, Dr. Sheffner opined that:

if respondent receives regular psychiatric treatment, and is compliant with her treatment plan, there is a reasonable basis to hope that her psychotic symptomatology may discontinue and become ameliorated. At such time he recommends psychiatric reassessment to see if she is then safe to practice medicine. And if she were then deemed to be safe, long term supervision by the Board would be indicated. He strongly recommends that respondent have a complete physical/neurologic examination to rule out other treatable causes of her psychosis.

Evidence Regarding the Petition

11. In her Narrative Statement, petitioner did not address her mental illness as instructed in the Petition form. Instead, petitioner wrote: (1) that she was a victim of identity theft of her California wallet license and faculty identification card from the University of California, Irvine; (2) that her United States citizenship and Master of Science diploma were also stolen (later replaced); (3) that she was falsely accused of Medi-Cal fraud in Long Beach, California but was “proven factually innocent;” (4) that medical assistant, Karena Hoep Heang, had forged her signature; and (5) that she was also “falsely accused of pretending to be a doctor (I have completed medical school, PM&R residence at Univ. of Washington, Seattle).”

The Petition includes two copies of the Petition page that includes Section X., “Recent History,” and Section XI, “Declaration.” Petitioner signed both these pages under penalty of perjury. The first of these pages was signed January 29, 2009, in Yakima, Washington. It indicates that, since her license revocation, petitioner has been placed on criminal probation or parole, and has been hospitalized for alcohol or drug problems or for mental illness. The second page was signed March 15, 2010, in Clackamas County, Oregon. In it, petitioner denies either being on probation/parole or being hospitalized since her license revocation. No explanation was provided for the discrepancies between these two sworn statements.

12. Under “Medical Background,” petitioner listed her specialty as Physical Medicine & Rehabilitation, board certified in May 1980. Petitioner described her current field of medicine as “neurodiagnostics.” Under “current type of practice,” petitioner wrote: “neurodiagnostics (mobile) self employed,” which she further described as “electrodiagnosis performing nerve conduction tests, somatosensory evoked potential test.”

13. *Letters of Recommendation:* Dr. Tobis penned two substantially identical letters to the Board on petitioner’s behalf, dated February 3, and March 3, 2010. His letters praise petitioner’s intelligence, competence and ethics during the period when petitioner worked as an Assistant Professor in the Department of Physical Medicine and Rehabilitation at the University of California, Irvine, while he was Department chairman. Dr. Tobis wrote

that, “at the present time, she is practicing medicine in the state of Washington. . .” Neither of Dr. Tobis’s letters reflects any knowledge of the reason petitioner’s license was revoked.

Dr. Couturier’s January 13, 2009, letter reflects his knowledge of petitioner while she trained at the University of Washington, Seattle, with a subspecialty in spinal cord injury. Dr. Couturier praised petitioner’s dedication as a professional, her involvement in research and continuing education. Dr. Couturier’s letter does not reflect any knowledge of the reason petitioner’s license was revoked.

Dr. Martinez’s January 26, 2009 letter stated, in pertinent part, that:

Dr. Bhatt has performed neurodiagnostic tests such as Nerve conduction velocity, Electromiography, and others for my patients at my office, and she has shown a very professional attitude in her job, and a very respectful [sic] one to the patients. As soon as she perform [sic] the tests for the patients, almost immediately she informs me her findings, and almost next day I have the reports. For all these qualities that she has it has been a pleasure to have her coming to my office to do work up for my patients.

Dr. Martinez’s letter does not reflect any knowledge of petitioner’s license revocation or the reason it was revoked.

Dr. Melvin’s laudatory letter, dated October 19, 1989, has no evidentiary value to this proceeding.

14. Board Senior Investigator Roberto Moya was assigned to investigate the Petition. On November 17, 2010, he advised petitioner of this fact and of how to communicate with him. His December 17, 2010, Investigative Report (Report) details the results of his investigation, and includes numerous supporting exhibits, including e-mails to Mr. Moya from petitioner.

Mr. Moya contacted the authors of the letters of recommendation submitted in support of the Petition. Dr. Couturier advised Mr. Moya that he based his letter on information provided him by the petitioner. He believed petitioner’s license was revoked because she was the victim of identity theft and her identity was in question. Dr. Martinez advised Mr. Moya that petitioner, working as an independent contractor, “helped her patients in 2009 in conducting the neuro-diagnostic test.” Dr. Martinez confirmed that she “was not fully informed of the reason Bhatt lost her medical license.” He was unable to contact Dr. Melvin.

Dr. Tobis informed Mr. Moya that, in November 2010 after he had written his letters of recommendation, he received an e-mail from petitioner that caused him concern about her mental stability. Specifically, Dr. Tobis believed petitioner was having symptoms of

paranoia. Dr. Tobis forwarded petitioner's e-mail to Mr. Moya. In this e-mail, petitioner discusses her belief that her problem is identity theft, and that additional problems concerned the theft of her U.S. citizenship certificate, the use of her social security number by an individual with a common surname to obtain a \$300,000 mortgage loan, and her discussion of these matters with an FBI agent.

15. As indicated in Mr. Moya's testimony and Report, petitioner is not licensed to practice medicine in either Washington or in Oregon. Her Washington license was revoked in October 1999, based upon her discipline in another state. In 2010, petitioner's application to reactivate her Oregon license to practice medicine was denied (OMB Case No. 09-524). The Oregon Medical Board's Investigative Case Report noted that, after processing petitioner's fingerprints, several California convictions were identified. Of particular note is petitioner's conviction for the unauthorized practice of medicine following a jury trial (Orange County Superior Court Case No. HM07717). Petitioner was placed on five years of supervised probation, was subject to three separate probation violations and served 25 days in jail for these violations. Petitioner's probation for this offense ended on July 8, 2006.

Mr. Moya's investigation, together with Dr. Martinez's letter and petitioner's own description of her current type of practice, strongly supports a conclusion that petitioner is currently practicing medicine without a license in the state of Washington.

16. Petitioner provided no relevant evidence regarding her current mental health. Petitioner has utterly failed to address the basis for her license revocation in the Petition. In her narrative statement, petitioner did not identify any actions she has undertaken to ameliorate her mental illness, such as regular participation in psychiatric/psychological counseling, consistent use of prescribed medications that might control her mental illness, and/or submission to a more recent psychological evaluation that demonstrates she might safely return to the practice of medicine. While petitioner told Mr. Moya that she had been seen by psychiatrist Dr. Sanjay Sahgal and a psychologist in 2004, she did not provide any documentation of these visits.

Instead, petitioner's narrative statement reiterates her previous assertions that she is the victim of identity theft (including theft of her faculty identification card, United States citizenship) and that she has been falsely accused of pretending to be a doctor. While she perseverates on an alleged identity theft, petitioner has never denied that she was the individual who participated in Dr. Sheffner's psychiatric examination. As indicated in Mr. Moya's investigative report and supporting documentation, petitioner has continued to exhibit conduct that is consistent with the previous determination that she is suffering from mental illness. Further, this investigation indicates that petitioner has been practicing medicine without a license in Washington and that she was previously convicted of practicing medicine without a license in California. The record does not support a finding that petitioner's mental illness is in any way ameliorated or that it would be consistent with public safety to reinstate her license to practice medicine, even on a probationary basis.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2307, inter alia, authorizes a person whose license has been revoked to petition the board for reinstatement. Where the license revocation was based upon mental illness, the petition may not be filed for at least one year after revocation. (§ 2307, subd. (b)(3).) The petition shall not be considered while the petitioner is under sentence for any criminal offense, including any period of court-imposed probation or parole, or while there is an accusation or petition to revoke probation pending against the person. (§ 2307, subd. (g).) The petition must be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed. (§ 2307, subd. (c).)

2. In reviewing the petition, consideration may be given to “all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner’s activities during the time the certificate was in good standing, and the petitioner’s rehabilitative efforts, general reputation for truth, and professional ability.” (§ 2307, subd. (e).)

3. In addition, pursuant to section 822, where a licensing agency has revoked a license because the licensee is mentally ill, the agency “shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person’s right to practice his or her profession may be safely reinstated.”

4. Petitioner bears the burden of establishing fitness for reinstatement of her revoked license. (Evid. Code, § 500.) In this case, petitioner must establish: (a) that she either no longer has a mental illness or that her mental illness is suitably controlled, and (b) that her right to practice medicine may be safely reinstated with due regard for the public health and safety.

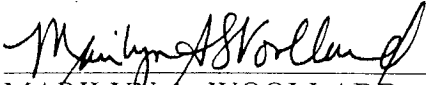
5. As set forth in the Factual Findings and Legal Conclusions as a whole, petitioner has not met her burden of demonstrating that her revoked license should be reinstated, even on a probationary basis as authorized by section 823. As set forth in Factual Findings 5, 6, and 10, petitioner has been determined to be suffering from mental illness, and the Board found that her “ability to practice medicine safely is impaired” due to that illness and that she “suffers from a paranoid psychotic condition.”

Considering all facts and circumstances, the request to reinstate petitioner’s license to practice medicine in the State of California must be denied.

ORDER

The Petition for Reinstatement of Physician's and Surgeon's Certificate Number A 34906 filed by Kiran Bhatt is DENIED.

DATED: August 15, 2011



MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings